

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Served: July 19, 1999

Joint Application of ALITALIA-LINEE AEREE ITALIANE-S.p.A.
KLM ROYAL DUTCH AIRLINES and NORTHWEST AIRLINES, INC.
for Approval of and Antitrust Immunity for an Alliance Agreement
under 49 U.S.C. §§ 41308 and 41309
Docket OST-1999-5674 - 12

**SCHEDULING NOTICE AND INITIAL DETERMINATION ON MOTION FOR
CONFIDENTIAL TREATMENT UNDER 14 C.F.R. 302.39**

On May 11, 1999, Alitalia-Linee Aeree Italiane-S.p.A. ("Alitalia"), KLM Royal Dutch Airlines ("KLM"), and Northwest Airlines, Inc. ("Northwest") (collectively the "Joint Applicants") filed an application for approval of and antitrust immunity for an Alliance Agreement and a Coordination Agreement. The objective of the proposed arrangement is to establish a legal framework enabling the expansion of the existing Northwest and KLM alliance to include Alitalia, while permitting each of the three airlines to retain its independent corporate and national identity.

Based on our initial review of the application, we determined that it lacked certain relevant information needed by the Department to consider this case. Therefore, we directed the Joint Applicants to submit additional information and evidence, as a supplement to their application; and deferred the 21-day deadline for the filing of comments set forth in 14 C.F.R. Part 303 until further notice.¹ We stated also that when we determined that the application was complete, we would establish a procedural schedule for the filing of responsive pleadings.

On July 15, 1999, the Joint Applicants filed the requested supplemental information. They also filed a joint motion under 14 C.F.R. § 302.39 of our regulations requesting that the Department withhold certain "proprietary and sensitive" documents and information from public disclosure (materials responding to information items A, B, and C). They maintain that various exemptions under the Freedom of Information Act protect this material from public disclosure, since they assert that the documents and data contain highly sensitive commercial information relating to international planning and strategic decision-making by the Joint Applicants.

As an initial matter, we find that the record of this case is now substantially complete, and we will establish procedural deadlines at this time. However, we will defer action on the Joint Applicant's request for confidential treatment. We note that answers to the confidentiality request are due July 26, 1999. Therefore, we will defer our determination on this matter, pending expiration of our regulatory comment period.

¹ See Order 99-5-10 and Notice dated June 22, 1999.

In the meantime, in order to afford interested parties prompt access to the documents under conditions agreed to by the Joint Applicants and imposed by the Department under similar recent circumstances,* we will grant immediate interim access to all documents covered by the Rule 39 Motion to counsel and outside experts for interested parties who file appropriate affidavits with the Department in advance. Moreover, we find it appropriate to grant interim access to any subsequent materials filed in this docket under a Rule 39 Motion to counsel and outside experts for interested parties who file appropriate affidavits with the Department in advance, unless the party filing the motion objects.

We expect all affidavits to state, at a minimum, that (1) the **affiant** is counsel for an interested party or an outside independent expert providing services to such a party; (2) the affiant will use the information only for the purpose of participating in this proceeding; and (3) the affiant will disclose such information only to other persons who have filed a valid affidavit in Docket OST-1999-5674. Affiants and interested parties must understand and agree that any pleading or other filing that includes or discusses information contained in the covered documents must itself be accompanied by a Rule 39 motion requesting confidential treatment. Affidavits must be filed in Docket OST- 1999-5674 with the Department of Transportation, Dockets, Room PL-40 1,400 Seventh Street, S.W., Washington, D.C., 20590.

Affiants having filed valid affidavits may examine the documents at the Department of Transportation at the Dockets location. Affiants must present a stamped copy of the affidavit filed with the Department of Transportation before examination of the documents.

As a final matter, we have reviewed the Joint Applicants' supplemental information. We now determine that the record of this case is substantially complete. Therefore, in order to provide all interested parties sufficient time to analyze adequately and comment fully on all material in the public and non-public record, we will require that answers to the application be filed no later than 21 days **from** the service date on this Notice, and that replies be filed no later than 7 business days after the last day for filing an answer.

By:

A. BRADLEY MIMS

Acting Assistant Secretary for Aviation
And International Affairs

(SEAL)

Dated: July 19, 1999

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

² See Notice in Docket OST-97-3285 dated January 9, 1998, and Orders 97-3-42 and 96-3-26.